

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION II

CACR08-57

December 10, 2008

MIKEL S. WEBSTER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
[CR-06-1526, CR-06-1527, CR-06-
1528]

HONORABLE JAMES O. COX,
JUDGE

DISMISSED

Appellant, Mikel Webster, attempted to enter a conditional guilty plea to three counts of residential burglary after his motion to suppress was denied. We are constrained to dismiss this case because appellant failed to strictly comply with Rule 24.3(b) of the Arkansas Rules of Criminal Procedure, which governs conditional guilty pleas.

Rule 24.3(b) provides:

With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review an adverse determination of a pretrial motion to suppress evidence. If the defendant prevails on appeal, he shall be allowed to withdraw his plea.

The appellate courts require strict compliance with the requirement that the right to appeal be reserved in writing. *Barnett v. State*, 336 Ark. 165, 984 S.W.2d 444 (1999).

On October 4, 2007, Webster filed a motion entitled “Motion to Enter Plea Conditioned on Appeal and Consent by State,” in which he requested that the trial court allow him to reserve the right to appeal the search and seizure issue raised by counsel, pursuant to Rule 24.3(b); the motion was signed by the deputy prosecuting attorney. On the same day, the signed order allowing Webster to enter a conditional plea was also filed. On October 6, 2007, a conditional guilty-plea statement was signed by Webster; there is no filemark on this document, but it is contained in the record. On October 11, 2007, a judgment and commitment order was filed, indicating that Webster appeared before the court and entered a negotiated plea of guilty on October 5, 2007; the only reference to this being a conditional plea was contained under the “Additional Terms” portion of the order. On October 22, 2007, an amended judgment and commitment order was filed, again reflecting the fact that Webster appeared before the trial court and entered a negotiated plea of guilty on October 5, 2007; it too referenced it being a conditional plea only under the “Additional Terms” portion of the order.

In *Gonder v. State*, 95 Ark. App. 144, 145, 234 S.W.3d 887, 889 (2006) (citations omitted), this court stated:

Our supreme court has interpreted Rule 24.3(b) to require strict compliance with the requirement that the right to appeal be reserved in writing. This is so even when there has been an attempt to enter a conditional plea at the trial court level. In addition, the writing must be contemporaneous with the defendant reserving his or her right to appeal. We also look for an indication that the conditional plea was entered with the approval of the trial court and the consent of the prosecuting attorney.

Absent strict compliance with the writing requirement, the appellate court acquires no jurisdiction to hear an appeal. *Grupa v. State*, 83 Ark. App. 389, 128 S.W.3d 470 (2003).

In *Barnett, supra*, the supreme court dismissed an attempted appeal from a conditional plea of guilty because, among other deficiencies, the signed plea statement was entered one day after the guilty plea was entered, which did not satisfy the requirement of a contemporaneous reservation in writing of the right to appeal. In *Grupa, supra*, this court, citing *Barnett v. State, supra*, dismissed an appeal because the oral entry of guilty was made six days prior to the judgment and commitment order being signed.

Here, the judgment and commitment order indicates that Webster appeared and entered his negotiated plea of guilty on October 5, 2007; the conditional guilty-plea statement was signed on October 6, 2007, by Webster; and the first judgment and commitment order was filed October 11, 2007. Our case law requires that we dismiss this case because there was no contemporaneous reservation in writing of the right to appeal with the guilty plea.

Appeal dismissed.

PITTMAN, C.J., and GLADWIN, J., agree.